

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of M. A. P.,)	
Petitioner)	
and)	CAUSE NO. 031211-30
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-5-63 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a 16-year-old junior (d/o/b April 24, 1987) at Castle High School in the Warrick County School Corporation (hereafter, referred to as “Castle”). She attended Mt. Vernon High School in the MSD of Mount Vernon (hereafter, “Mt. Vernon”) for her freshman and sophomore years. She was a member of the varsity cross country team at Mt. Vernon for both her freshman and sophomore years. This past summer, Petitioner moved into a residence within the boundaries of Castle. The Petitioner enrolled in Castle and completed the IHSAA Athletic Transfer Report on August 4, 2003. Mt. Vernon completed its portion of the Transfer Report on August 20, 2003, indicating its belief the transfer was primarily for athletic reasons, asserting Petitioner wished to be with friends on the swim team and noting the family continued to maintain a residence in Mt. Vernon, where Petitioner’s brother continues to attend Mt. Vernon Junior High School. Mt. Vernon recommended Petitioner be ineligible for varsity competition pursuant to Respondent’s by-law **C-19-4**.¹

¹The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (“B” for Boys, “G” for Girls), but many of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule C-19-4** provides as follows:

Transfers for Primarily Athletic Reasons

To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school, provided, however, if a student transfers and it is not discovered at that time that the transfer was primarily for athletic reasons, then under those

Castle completed the Transfer Report on September 2, 2003, and recommended Petitioner be accorded “limited eligibility” under **Rule C-19-6.2**.²

Respondent, by its Assistant Commissioner, reviewed the matter and, on September 19, 2003, declared Petitioner ineligible for interscholastic competition until August 14, 2004, pursuant to **C-19-4**. Respondent rejected Petitioner’s reliance upon **Rule C-19-5**, which permits a student-athlete to have immediate eligibility where a student transfers to a new school district with a corresponding change of residence by the student’s parent or guardian “provided there is a bona fide change of residence.”³ On

circumstances, the student may be declared ineligible for a period not to exceed 365 days following the date of enrollment or, may be declared ineligible for a period not to exceed 365 days commencing on the date that the Commissioner or his designee declares the student ineligible which was the result of a transfer for primarily athletic reasons. (All references are to the 2003-2004 by-laws.)

Respondent defines “transfer for primarily athletic reasons” under **Rule 19** as follows:

A transfer for primarily athletic reasons includes, but is not limited to:

- a. A transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. A transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. A transfer seeking a team consistent with the student’s athletic abilities;
- d. A transfer to obtain a means to nullify punitive action taken by the previous school.

²**Rule C-19-6.2** provides that “[a] student who transfers without a corresponding change of residence to a new district or territory by the student’s parent(s)/guardian(s) may be declared to have limited eligibility.” “Limited eligibility” is defined under **Rule 19** as follows: “A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in interschool athletics as a member of a varsity athletic team.”

³For **Rule 19** purposes, Respondent defines “bona fide change of residence” as follows:

Determination of what constitutes a “bona fide” change of residence depends upon the facts in each case[;] however, to be considered, the following facts must exist:

- a. The original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by any member of the student’s immediate family; and
- b. The student’s entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility purposes, a single family unit may not maintain two or more residences.
- c. The change of residence must be genuine, without fraud or deceit, and with permanent intent.

October 2, 2003, Petitioner, through Castle, appealed this decision to Respondent's Review Committee. The Review Committee conducted its review on November 7, 2003, and issued its written decision on November 14, 2003, upholding the determination of ineligibility for Petitioner.

Respondent's Review Committee noted that Petitioner attended Mt. Vernon for her first two years of high school. She enrolled in Castle on or about August 12, 2003, stating as a reason for the transfer that she wanted "to attend school with friends." The family did not abandon its residence in Mt. Vernon. Petitioner's brother continued to attend Mt. Vernon schools. Mt. Vernon opposes eligibility should Petitioner seek to participate on Castle's swim team. Castle agrees the move may not be a "bona fide" move under Respondent's by-laws, and noted Petitioner's brother does continue to attend the Mt. Vernon schools. However, Castle believes the Petitioner is sincere in her desire to attend school with her friends and recommends Petitioner have "limited eligibility."

Petitioner never participated on Mt. Vernon's swim team. However, she did belong to a local swim club. She did not participate on Mt. Vernon's swim team, according to the Review Committee's findings, because Petitioner's mother and the Mt. Vernon swim coach had differences of opinion regarding swimming. Petitioner later transferred to another swim club that serves as a "feeder" to the Castle swim team. Petitioner swam for this new club during her freshman and sophomore years but did not swim for the Mt. Vernon swim team. Petitioner has friends in the swim club, but she finds it difficult to train during the high school swimming season because her friends are swimming for Castle during this time. She would like to swim on the Castle team with her friends.

Petitioner's parents reported marital difficulties, resulting in the father moving in August of 2003 from the Mt. Vernon residence into a residence in the Castle area, which was also closer to his job. Petitioner's brother and mother continue to live in the Mt. Vernon residence. The Review Committee found that the "sole reason for the move to the apartment" in Castle "was because [the Petitioner] wanted to move into the Castle area, so she could attend Castle, which is the school where her friends, who were on the Castle swim team, attend." (Review Committee's Findings No. 15.)

The Review Committee concluded the move to Castle was not a "bona fide" move under the Respondent's by-laws in that the move was "for the sole reason of establishing eligibility at Castle." (Conclusion No. 2.) The move was not "genuine, without fraud or deceit, [or] with permanent intent." Id. In addition, the Review Committee concluded the move was primarily for athletic reasons. Accordingly, the Respondent's decision to deny eligibility to Petitioner under **Rule C-19-4** was upheld.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel

(CRP) on December 11, 2003.⁴ The CRP notified the parties by memorandum of December 11, 2003, of their respective hearing rights. The Respondent was asked to forward its record. The parent was provided with a “Consent to Disclose Student Information.” The parent, on December 12, 2003, elected to have the hearing proceedings **closed** to the public. Because the swimming competition is presently underway, a hearing date was set for December 23, 2003.⁵ Respondent moved for a continuance of the hearing date, which was granted. The record of the proceedings before the Review Committee was photocopied and transmitted on December 29, 2003, to CRP members.⁶ The hearing was rescheduled for January 7, 2004, in the offices of the Indiana Department of Education.

The parties appeared on January 7, 2003. Petitioner was not present but was represented by her father. Respondent was represented by counsel. Petitioner submitted seven (7) additional exhibits, which were marked P-1 through P-7 inclusive. Exhibits P-1 and P-2 were voter registration documents indicating the father’s residence in Newburgh, Indiana. Respondent did not object to these two exhibits. Exhibit P-3 was purportedly a written statement from Petitioner’s mother. However, the exhibit is not signed or authenticated in any fashion. Respondent objected to the document as hearsay, adding that there was no showing the declarant could not be present to testify and be cross examined.. The CRP noted the objection and the hearsay nature of the document, thereby limiting its utility. Exhibits P-4-, P-5, and P-6 related to a request for change of address and continued membership in a country club. Respondent did not object to these documents. Exhibit P-7 is a letter dated January 2, 2004, from an attorney. Respondent objected to the document because of its hearsay nature and further questioned its relevancy. Respondent also argued the declarant should have been present to testify and be cross examined. The Respondent’s objection was sustained, limiting the utility of the document.

Petitioner, at the close of opening statements but before the taking of testimony, moved for a separation of witnesses. Respondent objected, asserting Petitioner had waived this right. The CRP overruled the

⁴The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP’s decision does not affect any By-Law of the IHSAA.

⁵I.C. 20-5-63-7(a)(5) requires the conduct of a hearing “within five (5) business days after the panel receives a case in which time is a factor in relation to the scheduling of an athletic competition.”

⁶The hearing was conducted before CRP members John L. Earnest, chair designee; Pamela A. Hilligoss; Thomas J. Huberty, Ph.D.; James Perkins, Jr.; Michael L. Ross; Earl H. Smith, Jr.; Terry Thompson and Brad Tucker.

objection and ordered the separation of the witnesses.⁷

The following Findings of Fact and Conclusions of Law are based upon the evidence and testimony presented at the hearing in this matter, as well as the record as a whole. All Findings of Fact are based upon evidence presented that is substantial and reliable. I.C. 4-21.5-3-27(d).

FINDINGS OF FACT

1. Petitioner is a 16-year-old junior (d/o/b April 24, 1987) enrolled in Castle High School. She attended Mt. Vernon High School for her freshman and sophomore years of high school, where she participated on Mt. Vernon's girls' cross country team. Petitioner did not participate on Mt. Vernon's swim team either of these years.
2. Petitioner is an accomplished swimmer. She is considered one of the better swimmers in the State. She participated with the Mt. Vernon swim club through her junior high school years, where she participated in national competitions. Petitioner's mother is personally and professionally involved in swimming, serving as a coach for both club and school teams. On or about 1991, Petitioner's mother was hired by the MSD of Mt. Vernon. Part of her responsibilities involved teaching swimming classes. She also provides Red Cross training. Petitioner's mother and the swim coach at Mt. Vernon were unable to establish a cordial relationship. At some point, but before Petitioner entered high school, Petitioner's mother expressed differences of opinion with the Mt. Vernon swim coach regarding training methodologies. In 2001, Petitioner's mother expressed reservations to the Mt. Vernon athletic director regarding Petitioner swimming for the Mt. Vernon coach.
3. The Mt. Vernon swim coach was also Petitioner's teacher for four (4) years. He reported the classroom relationship was positive, and he described Petitioner as a good student. Petitioner reportedly made straight A's during her two (2) years at Mt. Vernon High School. The Mt. Vernon swim coach never had the opportunity to coach Petitioner. The Mt. Vernon swim team has enjoyed success, dominating the local sectional and conference competition for the past thirteen (13) years, finishing as high as third in the State on year. Petitioner would have been one of the top swimmers on the Mt. Vernon team had she elected to participate. Mt. Vernon's principal competition is Castle.
4. One of the current coaches at Castle had been coached previously by Petitioner's mother. He had also been an assistant coach at Mt. Vernon but left that post by mutual agreement with the Mt. Vernon swim coach prior to joining the Castle swimming program.

⁷The hearing was also closed to the public. Non-party witnesses were excluded with direction not to discuss any potential testimony in this matter until the conclusion of the hearing. After the taking of testimony but before closing arguments, Petitioner removed any objections to the witnesses being present during closing statements and deliberation of the CRP.

5. Petitioner has participated in the swim club serving Castle since she began high school, even though she has not competed in any swimming competition sanctioned by the Respondent. Many of her friends from this swim club participate on the Castle swim team. Petitioner practices two days a week with the Castle team, which is permitted, but she has not competed. She has also had an extended illness that is presently affecting her physical abilities.
6. Petitioner's mother and father have experienced some marital discord since about April of 2001. They participated in counseling beginning in October of 2002 and continuing through May of 2003, at which point the parents decided to separate. The father moved from the family residence in Mt. Vernon and located an apartment in Newburgh, which is within the Castle area. He acknowledged that he would have moved to Evansville, which is closer to his job, but his daughter wanted to move in with him and attend Castle where her friends from the swim club attended. She also wanted to participate on the Castle swim team because of her desire to compete and demonstrate her prowess. He moved into the apartment on or about August 15, 2003. Petitioner began school on or about August 12, 2003. Petitioner's parents have not initiated marriage dissolution proceedings nor are they under any court order with respect to legal rights and responsibilities during the current separation.
7. Although one of the proffered reasons for the move to Castle was based on the relative academic merits of Castle compared to Mt. Vernon, Petitioner did not provide any evidence to indicate any substantial difference between the curricular offerings of the two high schools. Petitioner asserted there were discipline problems at Mt. Vernon that interfered with her education, but no evidence was supplied to support this allegation. Mt. Vernon presented evidence that there were no discipline problems and that Mt. Vernon has been recognized by the State for its academic excellence.
8. Petitioner's brother continues to reside with Petitioner's mother in the Mt. Vernon school district, where he is presently a 7th grade student. He also participates in athletics, including swimming. Petitioner visits the Mt. Vernon residence often, including during the recent holiday season. She has a good relationship with her parents and is close to her mother.

CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are considered "state action," and for this purpose, makes the IHSAA analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-5-63 *et seq.* The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final

determination of student-eligibility adverse to the Student. The Petitioner timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.

2. Under **Rule C-19-5**, a student who transfers with a corresponding change of residence by the student's parent or guardian may be declared immediately eligible provided "there is a bona fide change of residence." The CRP does not dispute the father's reasons for his change of residence was "bona fide" on his part, but his selection of residence was dictated by Petitioner's desire to attend Castle with her friends from the swim club *and* compete on the Castle swim team. The social and athletic aspects are virtually indistinguishable. Without Petitioner's motivation, the father would have relocated to Evansville and not Newburgh. Petitioner's motivation was primarily for athletic reasons, which contravenes **Rule C-19-4**.
3. There is no evidence of undue influence, nor is there any evidence that Petitioner sought the transfer to avoid or obtain the relief from the coaching philosophy of the Mt. Vernon swim coach. There is evidence that Petitioner's mother likely approved of the transfer in order for Petitioner to avoid being coached by the Mt. Vernon swim coach, which, in this case and under these facts, could be reasonably imputed to the Petitioner.
4. There exists no evidence to indicate a need for Petitioner to reside with her father as opposed to her mother. Although Petitioner's mother is heavily involved both personally and professionally in swimming such that her competitive nature can be a driving force in the family, Petitioner's relationship with her mother is described as a close one. The proffered reason for living with her father is solely to attend Castle for the social/athletic aspects such a transfer would bring.⁸

Based on the foregoing Findings of Fact and Conclusions of Law, and following discussion of the merits of the case on the record, the Case Review Panel decided as follows:

ORDER

1. The CRP, by a unanimous vote of 8-0, upholds the determination of the Respondent that Petitioner is ineligible for athletic competition at Castle until August 14, 2004. This does not affect Petitioner's ability to participate and compete on her swim club as these events are not sanctioned by Respondent.

DATE: January 9, 2004

/s/ John L. Earnest, Chair
Indiana Case Review Panel

⁸The CRP commends Petitioner's father for his efforts to secure eligibility, even though he acknowledges that her present physical state would likely preclude competition this season even if she were eligible. The facts in this case simply do not support the relief that he seeks for his daughter.

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.